

HOUSE BILL NO. 280

INTRODUCED BY WAGMAN

A BILL FOR AN ACT ENTITLED: "AN ACT EXPANDING THE AUTHORIZED USE OF TWO-WAY ELECTRONIC AUDIO-VIDEO COMMUNICATION TO INCLUDE ALL ARRAIGNMENTS, ACCEPTANCE OF PLEAS, AND SENTENCING HEARINGS; CLARIFYING THE REQUIREMENTS FOR AUDIO-VIDEO COMMUNICATIONS; REQUIRING THE COURT TO INFORM THE DEFENDANT THAT THE DEFENDANT HAS THE RIGHT TO OBJECT TO THE USE OF AUDIO-VIDEO COMMUNICATIONS; AMENDING SECTIONS 46-12-201, 46-12-211, 46-16-105, 46-16-123, 46-18-102, AND 46-18-115, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-12-201, MCA, is amended to read:

"46-12-201. Manner of conducting arraignment -- use of two-way electronic audio-video communication -- exception. (1) Arraignment must be conducted in open court and must consist of reading the charge to the defendant or stating to the defendant the substance of the charge and calling on the defendant to plead to the charge. The defendant must be given a copy of the charging document before being called upon to plead. For purposes of this chapter, an arraignment that is conducted by the use of two-way electronic audio-video communication, allowing all of the participants to be ~~observed and~~ heard in the courtroom by all present AND ALLOWING THE PARTY TO BE SEEN, is considered to be an arraignment in open court.

(2) The court shall inquire of the defendant or the defendant's counsel the defendant's true name, and if the defendant's true name is given as any other than that used in the charge, the court shall order the defendant's name to be substituted for the name under which the defendant is charged.

(3) The court shall determine whether the defendant is under any disability that would prevent the court, in its discretion, from proceeding with the arraignment. The arraignment may be continued until the court determines the defendant is able to proceed.

(4) Whenever the law requires that a defendant in a misdemeanor or felony case be taken before a court for an arraignment, this requirement may, ~~in the discretion of the court, be satisfied either by the defendant's physical appearance before the court or by~~ BE SATISFIED BY two-way electronic audio-video

1 communication IF NEITHER PARTY OBJECTS AND THE COURT AGREES TO ITS USE AND HAS INFORMED THE DEFENDANT
2 THAT THE DEFENDANT HAS THE RIGHT TO OBJECT TO ITS USE. The audio-video communication must operate so that
3 the defendant and the judge can see each other simultaneously and converse with each other, so that the
4 defendant and the defendant's counsel, if any, can communicate privately, and so that the defendant and the
5 defendant's counsel are both physically present in the same place during the two-way electronic audio-video
6 communication. The defendant may waive the requirement that the defendant's counsel be in the defendant's
7 physical presence during the two-way electronic audio-video communication.

8 (5) A judge may order a defendant's physical appearance in court for arraignment. In a felony case, a
9 judge may not accept a plea of guilty or nolo contendere from a defendant ~~who is not~~ unless the defendant is
10 physically present in the courtroom or is appearing before the court by means of two-way electronic audio-video
11 communication."

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13 **Section 2.** Section 46-12-211, MCA, is amended to read:

14 **"46-12-211. Plea agreement procedure -- use of two-way electronic audio-video communication.**

15 (1) The prosecutor and the attorney for the defendant, or the defendant when acting pro se, may engage in
16 discussions with a view toward reaching an agreement that, upon the entering of a plea of guilty or nolo
17 contendere to a charged offense or to a lesser or related offense, the prosecutor will do any of the following:

18 (a) move for dismissal of other charges;

19 (b) agree that a specific sentence is the appropriate disposition of the case; or

20 (c) make a recommendation, or agree not to oppose the defendant's request, for a particular sentence,
21 with the understanding that the recommendation or request may not be binding upon the court.

22 (2) Subject to the provisions of subsection (5), if a plea agreement has been reached by the parties,
23 the court shall, on the record, require a disclosure of the agreement in open court or, on a showing of good
24 cause in camera, at the time that the plea is offered. If the agreement is of the type specified in subsection (1)(a)
25 or (1)(b), the court may accept or reject the agreement or may defer its decision as to the acceptance or rejection
26 until there has been an opportunity to consider the presentence report. If the agreement is of the type specified
27 in subsection (1)(c), the court shall advise the defendant that, if the court does not accept the recommendation
28 or request, the defendant nevertheless has no right to withdraw the plea.

29 (3) If the court accepts a plea agreement, the court shall inform the defendant that it will embody in the
30 judgment and sentence the disposition provided for in the plea agreement.

(4) If the court rejects a plea agreement of the type specified in subsection (1)(a) or (1)(b), the court shall, on the record, inform the parties of this fact and advise the defendant that the court is not bound by the plea agreement, afford the defendant an opportunity to withdraw the plea, and advise the defendant that if the defendant persists in the guilty or nolo contendere plea, the disposition of the case may be less favorable to the defendant than that contemplated by the plea agreement.

(5) For purposes of this section, ~~in cases in which the defendant is charged with a misdemeanor offense,~~ a disclosure of the agreement through the use of two-way electronic audio-video communication, allowing all of the participants to be ~~observed and~~ heard in the courtroom by all present and allowing the party speaking to be seen, is considered to be a disclosure in open court. Audio-video communication may be used if neither party objects and the court agrees to its use AND HAS INFORMED THE DEFENDANT THAT THE DEFENDANT HAS THE RIGHT TO OBJECT TO ITS USE. The audio-video communication must operate as provided in 46-12-201."

Section 3. Section 46-16-105, MCA, is amended to read:

"46-16-105. Plea of guilty -- use of two-way electronic audio-video communication. (1) Before or during trial, a plea of guilty or nolo contendere must be accepted when:

(a) subject to the provisions of subsection (3), the defendant enters a plea of guilty or nolo contendere in open court; and

(b) the court has informed the defendant of the consequences of the plea and of the maximum penalty provided by law that may be imposed upon acceptance of the plea.

(2) At any time before judgment or, except when a claim of innocence is supported by evidence of a fundamental miscarriage of justice, within 1 year after judgment becomes final, the court may, for good cause shown, permit the plea of guilty or nolo contendere to be withdrawn and a plea of not guilty substituted. A judgment becomes final for purposes of this subsection (2):

(a) when the time for appeal to the Montana supreme court expires;

(b) if an appeal is taken to the Montana supreme court, when the time for petitioning the United States supreme court for review expires; or

(c) if review is sought in the United States supreme court, on the date that that court issues its final order in the case.

(3) For purposes of this section, ~~in cases in which the defendant is charged with a misdemeanor offense,~~ an entry of a plea of guilty or nolo contendere through the use of two-way electronic audio-video

1 communication, allowing all of the participants to be ~~observed and~~ heard in the courtroom by all present and
2 allowing the party speaking to be seen, is considered to be an entry of a plea of guilty or nolo contendere in open
3 court. Audio-video communication may be used if neither party objects and the court agrees to its use AND HAS
4 INFORMED THE DEFENDANT THAT THE DEFENDANT HAS THE RIGHT TO OBJECT TO ITS USE. The audio-video
5 communication must operate as provided in 46-12-201."

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7 **Section 4.** Section 46-16-123, MCA, is amended to read:

8 **"46-16-123. Absence of defendant on receiving verdict or at sentencing.** (1) In all misdemeanor
9 cases, the verdict may be returned and the sentence imposed without the defendant being present.

10 (2) (a) In all felony cases, the defendant shall appear in person when the verdict is returned or the
11 sentence is imposed unless, after the exercise of due diligence to procure the defendant's presence, the court
12 finds that it is in the interest of justice that the verdict be returned and the sentence be pronounced in the
13 defendant's absence.

14 (b) For purposes of subsection (2)(a), the defendant's appearance may be through the use of two-way
15 electronic audio-video communication, allowing all of the participants to be heard in the courtroom by all present
16 and allowing the party speaking to be seen. Audio-video communication may be used if neither party objects
17 and the court agrees to its use AND HAS INFORMED THE DEFENDANT THAT THE DEFENDANT HAS THE RIGHT TO OBJECT
18 TO ITS USE. The audio-video communication must operate as provided in 46-12-201."

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20 **Section 5.** Section 46-18-102, MCA, is amended to read:

21 **"46-18-102. Rendering judgment and pronouncing sentence -- use of two-way electronic**
22 **audio-video communication.** (1) The judgment must be rendered in open court. For purposes of this section,
23 ~~in cases in which the defendant is charged with a misdemeanor offense;~~ a judgment rendered through the use
24 of two-way electronic audio-video communication, allowing all of the participants to be ~~observed and~~ heard in
25 the courtroom by all present and allowing the party speaking to be seen, is considered to be a judgment
26 rendered in open court. Audio-video communication may be used if neither party objects and the court agrees
27 to its use AND HAS INFORMED THE DEFENDANT THAT THE DEFENDANT HAS THE RIGHT TO OBJECT TO ITS USE. The
28 audio-video communication must operate as provided in 46-12-201.

29 (2) If the verdict or finding is not guilty, judgment must be rendered immediately and the defendant must
30 be discharged from custody or from the obligation of a bail bond.

(3) (a) Except as provided in 46-18-301, if the verdict or finding is guilty, sentence must be pronounced and judgment rendered within a reasonable time.

(b) When the sentence is pronounced, the judge shall clearly state for the record the reasons for imposing the sentence."

Section 6. Section 46-18-115, MCA, is amended to read:

"46-18-115. Sentencing hearing -- use of two-way electronic audio-video communication. Before imposing sentence or making any other disposition upon acceptance of a plea or upon a verdict or finding of guilty, the court shall conduct a sentencing hearing, without unreasonable delay, as follows:

(1) The court shall afford the parties an opportunity to be heard on any matter relevant to the disposition, including the imposition of a sentence enhancement penalty and the applicability of mandatory minimum sentences, persistent felony offender status, or an exception to these matters.

(2) If there is a possibility of imposing the death penalty, the court shall hold a hearing as provided by 46-18-301.

(3) Except as provided in 46-11-701 and 46-16-120 through 46-16-123, the court shall address the defendant personally to ascertain whether the defendant wishes to make a statement and to present any information in mitigation of punishment or reason why the defendant should not be sentenced. If the defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to do so. For purposes of this section, ~~in cases in which the defendant is charged with a misdemeanor offense,~~ the requirement that the court address the defendant personally may be satisfied by the use of two-way electronic audio-video communication. Audio-video communication may be used if neither party objects and the court agrees to its use AND HAS INFORMED THE DEFENDANT THAT THE DEFENDANT HAS THE RIGHT TO OBJECT TO ITS USE. The audio-video communication must operate as provided in 46-12-201.

(4) (a) The court shall permit the victim to present a statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's opinion regarding appropriate sentence. At the victim's option, the victim may present the statement in writing before the sentencing hearing or orally under oath at the sentencing hearing, or both.

(b) The court shall give copies of any written statements of the victim to the prosecutor and the defendant prior to imposing sentence.

(c) The court shall consider the victim's statement along with other factors. However, if the victim's

1 statement includes new material facts upon which the court intends to rely, the court shall allow the defendant
2 adequate opportunity to respond and may continue the sentencing hearing if necessary.

3 (5) The court shall impose sentence or make any other disposition authorized by law.

4 (6) In felony cases, the court shall specifically state all reasons for the sentence, including restrictions,
5 conditions, or enhancements imposed, in open court on the record and in the written judgment."

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7 NEW SECTION. **Section 7. Effective date.** [This act] is effective July 1, 2005.

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